IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8966 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**

2 To be referred to the Reporter or not ? - **No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **To be circulated to the Co-operative Tribunal. - To be circulated with Tribunal and Board of Nominees of Co-operative Societies Act.**

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GOJARIYA DUDH UTPADAK SAHAKARIMANDALI LTD. - Petitioner(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ABHAYKUMAR P SHAH for Petitioner No(s).: 1.

GOVERNMENT PLEADER for Respondent No(s).: 1.
DS AFF.NOT FILED (R) for Respondent No(s).: 1,2.
MR DILIP B RANA for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date : 21/07/2005

ORAL JUDGMENT

1. Shri Gojaria Dudh Utpadak Sahkari Mandali Ltd., petitioner has

filed this petition with a prayer that this Court may pleased to issue Writ of Certiorari and/or any other writ, order or direction to quash and set aside the order dated 13/4/2005 passed in Revision Application No.8 of 2003 passed by the Learned Deputy Secretary (Appeal), Gandhinagar (Annexure-H). The petition was filed on 9/5/2005.

1.1 This Court (Coram:Ms. H.N.Devani, J.) passed an order on 17/5/2005. This Court has issued a notice on 11/5/2005 as well as notice as to interim relief returnable on 13/5/2005. On 13/5/2005, party-in-person, Shri Babubhai was present and he requested to keep the matter on 17/5/2005 and therefore, the Court has permitted to keep the matter on 17/5/2005. On 17/5/2005, when the matter was heard, Mr.R.J.Goswami, learned advocate and Mr.Shah, learned advocate appeared for and this Court (Coram: Ms.H.N.Devani, J.) has issued rule by order dated 17/5/2005.

The facts giving rise to this petition are as under:

1. The Petitioner society was registered in the year 1964 under the Gujarat Co-operative Societies Act, 1961.

2. Petitioner society has held meeting on 28/5/1994. In the meeting, it was decided that the amendment is required to be made in Rule 7 to the effect that if any loan taken by the

members for the purchase of Cow and Buffalo, and thereafter, the said member does not deposit the milk for a period of 180 days in a year or 700 liters of milk in a year then the said member will not be eligible for the benefits viz., bonus, dividend, subsidiary and will not enjoy the benefit of a member of the society.

3. Petitioner states that in the meeting, the said amendment in Rule 7 came in force and signatures of the members have been taken including one of the applicants, who has filed the Appeal, viz., Ashok Kacharalal at Sr.No.31 including other members. Learned advocate for the petitioner has invited my attention to page 69 of the petition where the minutes of the meeting has recorded that amendment is approved.

4. It is the case of the petitioner that the District Registrar, Mahesana has approved the amendment in Rule 7 on 3/9/1994 and the same was informed to the petitioner society. Resolution of District Registrar has been produced at page 26 of the petition.

5. Petitioner society in its meeting, taken into consideration the approval of amendment in Rule 7, which was accordingly given effect in the resolution no.9, wherein the members have also signed including the applicants, who have filed the Appeal before

the learned Additional Registrar.

6. It is the case of the petitioner that the State of Gujarat has issued a notification in the year 2001 regarding the election of the Mandali to the effect that the rotation system has been abolished and election to be held. The said notification was taken into consideration in Resolution no.10, which was signed by the members of the society. Note of meeting dated 16/6/2005 is produced at Annexure-F, page 85 of the petition.

7. It is the case of the petitioner that election of the petitioner society were as per the amended Rule 7 and even the voter list was prepared accordingly between 27/7/2002 and 19/8/2002. Same has been produced by letter dated 30/7/2002 addressed by the Chief Election Officer to the petitioner.

8. It is the case of the petitioner that respondent no.2, Babubhai along with other three persons have filed Appeal No.78 of 2002 before the learned Additional Registrar (Appeals), Gandhinagar challenging the amendment in Buy-laws 7 (b) (3) & (4) and the Additional Registrar dismissed the said appeal by order dated 24/12/2002 and also held that whatever action taken by the Mandali as per Buy-Law 7 (b) (3) and (4) after approval of District Registrar is legal and valid.

9. Being aggrieved and dissatisfied with the said judgment and order, only respondent no.2 filed Revision Application No.8 of 2002 on 24/1/2003 before the learned Deputy Secretary (Appeals), Gandhinagar, challenging the order of Additional Registrar dated 24/12/2002.

10. Petitioner filed reply dated 17/4/2003 pointing out all the formalities, completed by the petitioner regarding the amendment in Buy-laws 7(b) (3) & (4).

11. The Deputy Secretary (Appeals) by judgment and order dated 13/4/2005 pleased to allow the Revision Application inter alia holding that the amendment in Buy-laws 7(b) (3) and (4) will be effective after a period of one year from giving information to the members of the society.

12. Being aggrieved and dissatisfied with the said order, the present petition has been filed by the petitioner on the several grounds.

13. I have heard Mr.Abhay Shah, learned advocate on behalf of the petitioner. On behalf of the respondent no.2, Ms.Falguni Patel, learned AGP is appearing. I have also heard Mr.Dilip B.Rana, learned advocate for the respondent no.2.

14. Learned advocate for the petitioner has assailed the order of the

impugned order on several grounds. Mr.Dilip B.Rana, learned advocate for the respondent no.2has tried to support the order of the authority in this behalf.

15.I have considered the submissions and order passed in this behalf. It is an admitted position that necessary resolution of the society dated 28/5/1994 to amend bye-laws 7 (b) of the bye-laws of the petitioner societies was passed on 20/6/2004 which has been produced by the petitioner at page 26 of the petition. The said amendment was duly approved under the provisions of Section 13 (3) of the Gujarat Cooperative Societies Act (Referred to as “Act”). Section 13 (3) provides for the amendments of bye-laws of the societies, particularly clause 3 provides that when the Registrar registers an amendment of the buy-laws of a society, he shall issue to the society a copy of amendment certified by him, which shall be conclusive evidence of its registration. The resolution of the Registrar is also produced by the petitioner at page 58 of the petition. Moreover, the said amendment was accepted and approved by the General Meeting of the society on 25/6/1995 which is at page 69.

16.From the record it appears that during the course of elections of the society, held in the year 2002, the voters list was prepared in accordance with the amended Rule 7 (b) (3) and (4). In fact, the Resolution dated 20/6/1994 approving the amendment of Bye-law

No.7(b) was challenged in the year 2002. Hence, the respondent no.2 and other members were well aware of the said amendment. Bye-laws of a society have the force of law, in sofaras the governance of the society is concerned. They intend to regulate the conduct of the business of the society. Once the bye-laws come into force, the conduct of the business of the society is required to be carried out in accordance with the bye-laws, unless the same are held to be invalid by a Court of competent jurisdiction and quashed and set aside.

17.In view of the aforesaid facts and circumstances of the case, finding of the appellate authority by its order that amended bye-law 7 (b) (3) and (4) will be effective after a period of one year from giving informaton to the members of the society is contrary to records and well settled principle of he law. The appellate authority have not considered all these fact which I have stated earlier in this behalf. The appellate authority has relied upon one judgment reported in 1993 (1) GLR 820 in the case of Ramanlal A. Patel vs. Hina Industries which has nothing to do with the Cooperative Societies Act. The appellate authority at running page 112, relied upon a judgment reported at AIR 67 Bombay, 768. Unfortunately the name of the case has not been cited when this Court has taken the volume of AIR 67 Bombay, the last page is 528 therefore, it appears that the Tribunal has relied upon the judgment which is not traceable. This Court requests that

henceforth the Tribunal gives citation along with the name of the case.

18. In view of this, the reliance placed by the appellate authority on two of the decisions is misplaced. Therefore, the order of the authority is contrary to the provisions of the resolution and therefore, the said order is liable to be quashed and set aside. Hence I have seen the earlier order of the Additional Registrar (Appeals). Additional Registrar while dismissing the appeal has rightly held that District Registrar has approved the amendment from 3/9/1994 and amendment carried out by the societies are legal and valid. There is no breach of procedures and rules in this behalf and after amendment, 847 members have complied with the said amendment and acted accordingly. The amendment has been changed after eight years and therefore, the Additional Registrar (Appeals) rightly rejected the same.

19. In view of the same, Special Civil Application No.8966 of 2005 is allowed. Rule made Absolute.

20. Special Civil Application No.12258 of 2005 is therefore, rejected.

(K.M.Mehta, J.)

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